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UNIT 11 WORLD INTELLECTUAL PROPERTY ORGANIZATION-I MISSION AND STRUCTURE

Structure

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11.1 INTRODUCTION

Intellectual property enjoys protection within a country under specific rights given by the national laws for the purpose. Thus, Intellectual Property Rights (IPRs) are subject to territorial limitations. The IPRs available within a country are not automatically extendable to another country if no agreement exists between the two countries in that respect. If laws for IPRs are substantially different from one country to another, the flow of technology and intellectual resources/property would be severely impeded, which in time would gravely undermine economic growth and development. The owners and creators of intellectual wealth would be reluctant to send their wares to a country which would be lax in safeguarding their interests.

Such a situation indeed arose in the nineteenth century, some 130 years ago, when many foreign countries were not interested in bringing their inventions to an exhibition in Vienna in 1873 at the invitation of the Empire of Austria– Hungary. Inadequate legal protection to the exhibits as intellectual property was the reason behind this unwillingness to participate. It gave a jolt to the international community, precipitating the realization of an immediate need to forge an international understanding on patent protection.

Objectives

After studying the material in this unit, you should be able to:

- explain the need of an international organisation needed to deal with the issues of intellectual property.
- understand the evolution of WIPO;
- list the mission and activities of WIPO;
- describe the structure of WIPO;
- detail the constitutional reforms in the offing as part of the evolutionary process of WIPO; and
- explain the initiatives WIPO has undertaken to widen its reach globally in pursuit of its objectives.

11.2 HISTORY – ESTABLISHMENT OF WIPO

During the nineteenth century, before the existence of any international convention in the field of industrial property, it was difficult to obtain protection for industrial property rights in the various countries of the world because of the diversity of their

laws. Moreover, patent applications had to be made roughly at the same time in all countries in order to ensure that publication in one country does not destroy the novelty of the invention in the other countries. These practical problems created a strong desire to overcome such difficulties.

During the second half of the nineteenth century the development of a more internationally oriented flow of technology and the increase of international trade made harmonization of industrial property laws urgent in both the patent and the trademark fields.

As stated above, many foreign visitors were not willing to exhibit their inventions at the Vienna exhibition in 1873 in view of the inadequate legal protection offered to exhibited inventions. This lead to two developments: firstly, a special Austrian law secured temporary protection to all foreigners participating in the exhibition for their inventions, trademarks and industrial designs. Secondly, the Congress of Vienna for Patent Reform was convened during the same year, 1873. It elaborated a number of principles on which an effective and useful patent system should be based, and urged governments “to bring about an international understanding upon patent protection as soon as possible.”

As a follow-up to the Vienna Congress, an International Congress on Industrial Property was convened at Paris in l878. Its main result was a decision that one of the governments should be asked to convene an international diplomatic conference “with the task of determining the basis of uniform legislation” in the field of industrial property.

Following that Congress, a final draft proposing an international “union” for the protection of industrial property was prepared in France and was sent by the French Government to a number of other countries, together with an invitation to attend the International Conference in Paris of l880. That Conference adopted a draft convention which contained, in essence, those substantive provisions which are still today the main features of the Paris Convention.

A new Diplomatic Conference was convened in Paris in l883, which ended with final approval and signature of the Paris Convention for the Protection of Industrial Property. The Paris Convention was signed by 11 States: Belgium, Brazil, El Salvador, France, Guatemala, Italy, the Netherlands, Portugal, Serbia, Spain and Switzerland. When it came into effect on July 7, l884, Great Britain, Tunisia and Ecuador had adhered as well, bringing the initial number of member countries to l4. It was only during the first quarter of the twentieth century and then particularly after World War II that the Paris Convention increased its membership more significantly.

The Paris Convention has been revised from time to time after 1883. Each of the revision conferences, starting with the Brussels Conference in 1900, ended with the adoption of a revised Act of the Paris Convention. With the exception of the Acts concluded at the revision conferences of Brussels (1897 and 1900) and Washington, D.C. (1911), which are no longer in force, all those earlier Acts are still of significance, although the great majority of the countries are now party to the latest Act, that of Stockholm of 1967.

The “Convention Establishing the World Intellectual Property Organization” was signed at Stockholm in 1967 and entered into force in l970. However, the origins of WIPO go back to l883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. Both of these conventions provided for the establishment of international secretariats, and both were placed under the supervision of the Swiss Federal Government. The few officials who were needed to carry out the administration of the two conventions were located in Berne, Switzerland.

Initially there were two secretariats (one for industrial property, one for copyright) for the administration of the two conventions, but in l893 the two secretariats united. The most recent name of the organization, before it became WIPO, was BIRPI, the acronym of the French language version of the name: United International Bureaux for the Protection of Intellectual Property (in English). In l960, BIRPI moved from Berne to Geneva.

At the l967 diplomatic conference in Stockholm, when WIPO was established, the administrative and financial clauses of all the then existing multilateral treaties administered by BIRPI were revised. The said clauses had to be revised because member States wished to assume the position of full governing body of the Organization (WIPO), thus removing the supervisory authority of the Swiss Government, to give it the same status as all the other comparable intergovernmental organizations. Today, the WIPO is a specialized agency of the United Nations system of intergovernmental organizations, as a result of an agreement signed between the UNO and the WIPO. The agreement came into effect on December 17, 1974.

A specialized agency, although it belongs to the family of United Nations organizations, retains its independence. Each specialized agency has its own membership. All member States of the United Nations are entitled to become members of all the specialized agencies, but in fact not all member States of the United Nations are members of all the specialized agencies. Each State decides for itself whether it wants, or does not want, to become a member of any particular specialized agency. Each specialized agency has its own constitution, its own governing bodies, its own elected executive head, its own income, its own budget, its own staff, its own programs and activities. Machinery exists for coordinating the activities of all the specialized agencies, among themselves and with the United Nations, but basically each agency remains responsible, under its own constitution, to its own governing bodies, which are the States members of the organization.

The agreement between the United Nations and WIPO recognizes that WIPO is, subject to the competence of the United Nations and its organs, responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development.

The Convention establishing WIPO declares that membership shall be open to any State which is a member of any of the Unions, and to any State which is not a member of any of the Unions, provided that it is a member of the United Nations, of any of the specialized agencies of the United Nations, or of the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice or is invited by the General Assembly of WIPO to become a member. Thus, only States can be members of WIPO or, indeed, of any other specialized agency of the United Nations.

To become a member, a State must deposit an instrument of ratification or accession with the Director General of WIPO at Geneva. States party to the Paris or Berne Conventions may become members of WIPO only if they are already bound by, or concurrently ratify or accede to, at least the administrative provisions of the Stockholm (l967) Act of the Paris Convention or of the Paris (1971) Act of the Berne Convention.

11.3 MISSION AND ACTIVITIES OF WIPO

The mission of WIPO is to promote through international cooperation the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind. Its effect is to contribute to a balance between the stimulation of creativity worldwide, by sufficiently protecting the moral

and material interests of creators, on the one hand, and the provision of access to the socio-economic and cultural benefits of such creativity worldwide, on the other hand.

WIPO's place on the international scene has greatly changed since its beginnings, when it was created to serve as the secretariat of treaties concluded between States. Although WIPO has maintained this function (it currently administers 23 such treaties), together with the consequential one of promoting intergovernmental cooperation in the administration of intellectual property, its activities have not only expanded, but also greatly diversified.

An outstanding example of the expansion of WIPO's earlier work is the growth of its registration activities that is to say, the increase in the use of international treaties which create the facility of a single procedure to apply for patents, and register trademarks and industrial designs valid in up to all States members of those treaties. The Patent Cooperation Treaty (PCT), the Madrid Agreement and Protocol Concerning the International Registration of Marks, and the Hague Agreement Concerning the International Deposit of Industrial Designs have all given rise to an increased volume of registration activities, with PCT applications, in particular, accounting for a large share of such applications. To strengthen this aspect of WIPO's work, a new international treaty, namely, the Patent Law Treaty, came into existence in June 2000: its purpose is to streamline application procedures and to reduce the cost of obtaining simultaneous patent protection in several countries.

In its more recent history, WIPO increasingly does not stop short at promoting all kinds of intellectual property. This is only the means to achieve an end, which is to promote human creativity that results in industrial and cultural products and services enriching human society as a whole. Thus WIPO is increasingly involved in helping developing countries, whose creativity has yet to be adequately harnessed, to receive the full benefits of the creations of their citizens, as well as those of the outside world. WIPO's role is to assist them also in the preparation and enforcement of laws, in the establishment of sound institutions and administrative structures, and in the training of appropriate personnel. WIPO has given particular attention to the 49 Least Developed Countries (LDCs), and has also given similar assistance to countries whose economies are in transition, in Central Asia, Central and Eastern Europe and in the Baltic region.

WIPO's Cooperation for Development Program (now renamed as Economic Development Program) is closely interwoven with governmental and intergovernmental cooperation, including WIPO's agreement with the World Trade Organization (WTO), whereby WIPO assists developing countries in the implementation of WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The problem of development is compounded by rapid technological and scientific progress. WIPO's approach is twofold: to identify and to promote international solutions to the legal and administrative problems posed by digital technology, especially the Internet, to the traditional notions and practices of intellectual property.

WIPO's work in alternative dispute resolution between individuals and companies, through the WIPO Arbitration and Mediation Center has been extended to cover the problems arising from the misuse of domain names on the Internet. WIPO has been accredited by the Internet Corporation for Assigned Names and Numbers (ICANN) to administer cases filed under ICANN's Uniform Domain Name Dispute Resolution Policy. Disputes are handled and resolved on-line, enabling parties to settle cases in a time–and cost– effective manner, without being physically present in the same place.

A project that will greatly advance the sharing of valuable intellectual property information benefits is the worldwide global intellectual property information network (WIPONET), a project launched by WIPO in 1999. WIPONET is designed to establish a secure, global network linking the intellectual property offices of all

WIPO's Member States, facilitating access to and exchange of information worldwide. Already WIPO's main and subsidiary websites are heavily used all over the world.

WIPO is increasingly adopting a global approach not only to intellectual property in itself, but to the place of intellectual property in the wider framework of emerging issues such as traditional knowledge, folklore, biological diversity, environmental protection and human rights. WIPO has followed the method of consultation and empirical research to find, for example, the relation between intellectual property and genetic resources, traditional knowledge and folklore.

One of the most significant present-day tasks of WIPO is to demystify intellectual property, so that it is recognized as a part of everyday life not only by those directly involved in it at governmental, legal, industrial and cultural levels, but also by any others who compose civil society, whether in non-governmental organizations or small businesses, whether farmers, public health personnel, individual creators or simply interested members of the general public. Realizing the importance of small- and medium-sized enterprises (SMEs) as the backbone of market economies, WIPO has established a program aimed at helping them to fulfill their potential as a powerful force behind wealth creation.

WIPO's agenda of outreach to all members of society is through their inclusion as stakeholders and partners in global and national intellectual property systems. To ensure that such inclusion is of benefit to the parties concerned, WIPO pursues a policy of empowerment. This means that WIPO's activities aim to give to all levels of society an awareness of how they have a stake in a healthy intellectual property system, and also to provide them access to the knowledge, experience and expertise which will enable them effectively to use those systems.

SAQ 1

Spend 2 min.

Who can be a member of WIPO?

SAQ 2

Spend 2 min.

Mark True or False:

- WIPO's activities stop at promoting all kinds of intellectual property.
- WIPO assists developing countries in implementing the TRIPS agreement of the WTO.

11.4 STRUCTURE OF WIPO

The constitution, the "basic instrument," of WIPO is the Convention signed at Stockholm in l967. In describing WIPO, the following questions will be answered in very general terms: Why is an intergovernmental organization needed? What are the Unions administered by WIPO? Which States are members of WIPO? What does WIPO do? How is it governed and managed?

The General Assembly consists of all the States which are members of WIPO and are also members of any of the Unions.

Unlike the General Assembly, the Conference consists of all the States which are members of WIPO whether or not they are members of any of the Unions. The main functions of the Conference were originally divided into five groups. First, the Conference was to constitute a forum for exchanges of views, between all States members of WIPO, on matters relating to intellectual property, and, in this context, the Conference was empowered, in particular, to make any recommendations on such matters, having regard to the competence and autonomy of the Unions. Secondly, the

Conference was to establish the biennial development cooperation program for developing countries and, thirdly, to adopt a budget for that purpose. Fourth, the Conference is also competent to adopt amendments to the Convention establishing WIPO. Proposals for the amendment of the Convention may be initiated by any State member of WIPO, by the Coordination Committee or by the Director General. Fifth, the Conference, like the General Assembly, was to determine which States and organizations would be admitted to its meetings as observers.

Why is an intergovernmental intellectual property organization needed? Intellectual property rights are limited territorially; they exist and can be exercised only within the jurisdiction of the country or countries under whose laws they are granted. But works of the mind, including inventive ideas, do and should cross frontiers with ease in a world of interdependent nations. Moreover, with growing similarity in the approach and procedures governing intellectual property matters in various countries, it makes eminent sense to simplify practice through international standardization and mutual recognition of rights and duties among nations. Therefore, governments have negotiated and adopted multilateral treaties in the various fields of intellectual property, each of which establishes a "Union" of countries which agree to grant to nationals of other countries of the Union the same protection as they grant to their own, as well as to follow certain common rules, standards and practices.

The Unions administered by WIPO are founded on the treaties. A Union consists of all the States that are party to a particular treaty. The name of the Union is, in most cases, taken from the place where the text of the treaty was first adopted (thus the Paris Union, the Berne Union, etc.). The treaties fall into three groups.

The first group of treaties establishes international protection, that is to say, they are treaties which are the source of legal protection agreed between countries at the international level. For instance, three treaties on industrial property fall into this group—the Paris Convention, the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The second group consists of treaties which facilitate international protection. For instance, six treaties on industrial property fall into this group. They are the Patent Cooperation Treaty which provides for the filing of international applications for patents, the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol, the Lisbon Agreement which has already been mentioned because it belongs to both the first and second groups, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the Hague Agreement Concerning the International Deposit of Industrial Designs.

The third group consists of treaties which establish classification systems and procedures for improving them and keeping them up to date. Four treaties, all dealing with industrial property, fall into this group. They are the International Patent Classification Agreement (IPC), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks and the Locarno Agreement Establishing an International Classification for Industrial Designs.

Revising these treaties and establishing new ones are tasks which require a constant effort of international cooperation and negotiation, supported by a specialized secretariat. WIPO provides the framework and the services for this work.

SAQ 3

Spend 5 min.

Who are the members of

- WIPO General Assembly
- WIPO Conference, and
- A WIPO Union

11.5 ADMINISTRATION OF WIPO

The Convention establishing WIPO provides for four different organs: the General Assembly, the Conference, the Coordination Committee, and the International Bureau of WIPO or Secretariat.

The General Assembly is the supreme organ of WIPO. Among its other powers and functions, the General Assembly appoints the Director General upon nomination by the Coordination Committee; it reviews and approves the reports and activities of the Coordination Committee as well as the reports of the Director General concerning WIPO; it adopts the financial regulations of WIPO and the biennial budget of expenses common to the Unions; it approves the measures proposed by the Director General concerning the administration of the international agreements designed to promote the protection of intellectual property; it determines the working languages of the Secretariat taking into consideration the practice of the United Nations; and it also determines which States not members of WIPO and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.

The fourth organ of WIPO is the International Bureau of WIPO or Secretariat. It is headed by the Director General, and further consists of those who make up its regular staff; the staff in the professional and higher categories are recruited on a principle of equitable geographical distribution established in the United Nations system, and other staff are from a wide range of countries of all regions of the world.

11.6 CONSTITUTIONAL REFORM

The Member States of WIPO have, in recent years, adopted or considered a series of policies which ultimately require, for their implementation, amendment of the WIPO Convention and at least certain of the other treaties administered by WIPO.

The first such policy relates to the unitary contribution system and changes in contribution classes. In 1993, the WIPO Conference and the Assemblies of the Paris and Berne Unions adopted the unitary contribution system in replacement of the multiple contribution system provided for in the WIPO Convention and the treaties administered by WIPO. Under the unitary contribution system a State party to any of WIPO's contribution treaties would pay a single contribution, regardless of the number of such treaties to which it was party. It was adopted on a provisional and experimental basis, pending an evaluation of the outcome and possibly subsequently the amendment of the relevant provisions of the WIPO Convention and the treaties administered by WIPO that provide for the payment of contributions by Contracting States. In 1989, 1991 and 1993, the same organs also adopted new contribution classes on the same provisional basis, pending the amendment of the requisite treaties to bring the provisions of those treaties into line with the new classes.

A second such policy arises out of the work of the Working Group on Policies and Practices for the Nomination and Appointment of Directors General, which was established by the WIPO Coordination Committee in 1988. Acting upon the recommendations of the Working Group, the WIPO Coordination Committee, and the WIPO General Assembly, the Assemblies of the Paris and Berne Unions and the WIPO Conference adopted a proposal to amend Article 9(3) of the Convention Establishing the World Intellectual Property Organization, limiting to 12 years a Director General's total period in office.

The third series of policies arises out of the adoption of the 1998-99 Program and Budget. That Program and Budget contained various proposals for the simplification and rationalization of the governance structure of WIPO. The proposals for simplification and rationalization relate to committees constituted directly by the Assemblies of the Member States; there are, however, other similar proposals in respect of organs or bodies constituted by WIPO-administered treaties.

Given that it appeared necessary to set in motion the procedure for treaty amendment because of the new practices relating to the unitary contribution system and contribution classes and the policy on limitation of mandates of Directors General, the WIPO Secretariat used the opportunity to propose other options for change in the governance structure of WIPO.

The culmination of proposals by the Secretariat and the adoption by the Member States of the policies described above was the creation of a Working Group on Constitutional Reform, established by the WIPO General Assembly at its meeting in September 1999. The Working Group met on six occasions in the space of three years, twice in 2000, 2001 and 2002 respectively. Its final recommendations were submitted to, and adopted by, the Assemblies of Member States of WIPO in September 2002.

The various proposals on constitutional reform may be described under five topics:

- **Unitary contribution system and changes in contribution classes**

  The first set of proposals on constitutional reform is to amend the relevant WIPO-administered treaties in order to formalize the unitary contribution system adopted in 1993 and the new contribution classes adopted in 1989, 1991 and 1993.

- **Executive Committees of the Paris Union, the Berne Union and the PCT Union**

  The reasons for the establishment of the Executive Committees of the Paris, Berne and PCT Unions seem to have been the perceived need for a body of a lesser number of Member States than the Assembly in order to consider matters which were urgent in nature, and thus could not await the next ordinary session of the Assembly, or which were of lesser importance and did not require attention by the Assembly.

  In practice, the Executive Committees have never functioned as intended. The PCT Executive Committee was never actually constituted; and neither the Paris nor the Berne Executive Committee has ever considered, as a body meeting separately, a substantive item of business.

  The second set of proposals on constitutional reform is therefore to amend the WIPO Convention, the Paris Convention, the Berne Convention and the PCT by abolishing the Executive Committees of the Paris, Berne and PCT Unions.

- **WIPO Conference**

  The WIPO Conference, as stated above, is composed of all the Member States of WIPO. In practice, the Conference never meets separately from the General Assembly. It meets during the same period and in the same room as the General Assembly and the only ostensible difference in the proceedings is the difference in presiding officer. In practice also, the Conference has considered very few separate items of business. In reality the functional division of work originally envisaged between the General Assembly and the Conference did not occur.

The third set of proposals on constitutional reform is to amend the WIPO Convention in order to abolish the WIPO Conference.

- **The Other Conferences of Representatives**

The Conferences of Representatives that exist for various Unions were the predecessor bodies of the Assemblies of those Unions. The Assembly of Member States of a Union was introduced as a result of the reforms at the 1967 Stockholm Diplomatic Conference, in the Stockholm Act of those treaties that were revised at that Diplomatic Conference. Conferences of Representatives thus exist only for those Unions:

i) which were established under treaties that have Acts that were concluded before 1967, and

ii) which have Member States that have not yet acceded to or ratified the Stockholm (1967) Act of the Treaty. The following Conferences of Representatives still exist:

- Paris Union Conference of Representatives;
- Berne Union Conference of Representatives;
- Hague Union Conference of Representatives;
- Nice Union Conference of Representatives; and
- the Lisbon Union Council.

The powers conferred on the Conferences of Representatives by their constituent instruments were extremely limited. In practice, the bodies have never separately considered any item of substantive business. Their convening has tended to be a formality only. More over, the number of States belonging to those bodies is small and declining, as States progressively accede to the Stockholm Acts of the relevant treaties.

The fourth set of proposals on constitutional reform is to amend the relevant conventions and other documents in order to discontinue the Conferences of Representatives.

- **Unitary Assembly**

Under this proposal, the WIPO General Assembly would be the body competent to make decisions in respect of all WIPO treaties. Each Assembly constituted by a WIPO treaty would be replaced by the WIPO General Assembly so that there would be one organization, one Assembly of Member States, one Secretariat and one contribution from Member States. There would continue to be a number of different treaties, with differing memberships, providing for rights and obligations in the field of intellectual property. They would, however, all be administered in accordance with the unitary structure.

The fifth set of proposals on constitutional reform is to amend the relevant treaties and conventions in order to reduce the number of WIPO governing bodies to one single Assembly.

The final three recommendations on which agreement was reached by the members of the Working Group on Constitutional Reform were submitted to the General Assembly in September 2002. These recommendations were: (i) the abolition of the WIPO Conference; (ii) in respect of the unitary contribution system and the changes in contribution classes, the formalization in the treaties of what was already in practice; and (iii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions, from once every two years to once every year.

The Assemblies of the Member States of WIPO adopted the three recommendations of the Working Group on Constitutional Reform in September 2002, and set out a timetable for the process of amendment of several WIPO-administered treaties for implementation of the suggested recommendations. The proposed amendments were considered and adopted by the WIPO General Assembly and the other concerned Assemblies of the Unions in September 2003.

The Member States of WIPO have now been invited to accept the amendments in accordance with their respective constitutional processes. The said amendments will enter into force one month after written notifications of acceptance have been received by the Director General from three-fourths of the Member States.

11.7 WIDER CONSULTATION AND OUTREACH

Apart from using the mechanisms described above, WIPO has increasingly sought to build up the broadest possible base throughout the world. For this purpose, several advisory bodies have been established, and a policy of public outreach has been pursued.

The Policy Advisory Commission

In March 1998, the Director General of WIPO proposed to Member States the establishment of a Commission of eminent international personalities drawn from politics, diplomacy and administration, to "enhance the Secretariat's capacity to monitor and respond in a timely, informed and effective manner to international and regional developments in intellectual property, in information technology, and in other fields bearing on WIPO's operations and its policy environment." More recently (June 2000), members have included HRH Prince El-Hassan of Jordan, Fidel Ramos (Philippines) and Petar Stoyanov (Bulgaria).

Member States approved this proposal. The Policy Advisory Commission (PAC) was to consider vital topics such as the advance of globalization, digital technology, breakthrough discoveries in biotechnology, transfer of technology to developing countries, conservation of biodiversity and the environment, electronic commerce, protection of indigenous cultures, the viability of an "international patent", ensuring the continuing and widespread availability of pharmaceuticals, and their relation to the intellectual property system. It was to present its findings to the Director General, who would draw on its conclusions in formulating possible policy proposals for the Member States' consideration.

The first meeting of the Commission took place in April 1999. HRH Prince El-Hassan of Jordan was elected Chair of the 25-member body, which held detailed discussions on both globalization and the need to demystify and depoliticize intellectual property issues. It then resolved to set up a Task Force to develop its work program: this was to include the formulation of a World Intellectual Property Declaration (WIPD) stating clearly and simply to the general public the benefits of intellectual property and intellectual property rights, and the development of a series of expert studies showing the relationship between a functioning intellectual property system and wealth creation.

The Task Force met twice, in Amman in July 1999 and Washington, D.C., in March 2000, and worked on the above-mentioned projects as well as considering other questions. The first study in the series, authored by member Vice-Minister Arai of Japan, looked in detail at the Japanese experience of intellectual property and wealth creation, and was published under a new Policy Advisory Commission imprint in December 1999. Work on the World Intellectual Property Declaration led to its adoption by the PAC at its second meeting in June 2000.

The second meeting of the PAC also heard and discussed presentations on the WIPO Worldwide Academy, WIPO's approach to global communications, the information-

technology- based WIPONET project and its potential benefits for developing countries, developments in automation of the Patent Cooperation Treaty and the results of the recent Diplomatic Conference for the Adoption of the Patent Law Treaty.

The third meeting of the PAC took place in Geneva in October 2001, following a preparatory meeting of the Task Force in New York in May of that year. The topics discussed, accompanied by presentations, were the Agenda for Development of the International Patent System and Issues Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

A fourth plenary meeting took place in November 2003. This followed a preparatory Task Force meeting in Beijing in May 2002. The topics discussed were Managing Cultural Assets, with a discussion paper, entitled *Copyright, Culture and Development: the Role of Intellectual Property and of WIPO in the Cultural Industries*, provided by Mr. Bruce Lehman, and *Intellectual Property Policies and the Japanese Economy*, with a discussion paper, entitled *Strategic Program for the Creation, Protection and Exploitation of Intellectual Property*, provided by Mr. Hisamitsu Arai.

The Industry Advisory Commission

The Industry Advisory Commission (IAC) was established in 1998 as part of the efforts by WIPO's Director General to take into consideration the broadest range of opinions in the context of policy-making. The Commission is composed of some 20 top level representatives from the private sector. These representatives were invited in their personal capacity, with consideration being given to balanced geographical distribution and the need to have as broad a range of industries as possible represented. Among the industries represented are those connected with entertainment (motion pictures, theater, music), telecommunications, pharmaceuticals and biotechnology.

The idea of the IAC arose from the Director General's conviction that an organization like WIPO, whose mission is to promote the protection of intellectual property worldwide, must stay abreast of developments in the private sector.

The IAC, which generally meets bi-annually, is of crucial importance to WIPO in view of the fact that industry benefits most directly from intellectual property protection. In addition, the challenges that industry faces from globalization and rapid developments in technology directly affect and are affected by intellectual property. The IAC thus provides a forum for leaders in industry to exchange views with WIPO. The IAC will also enhance the WIPO Secretariat's capacity to monitor and respond in a timely, informed and effective manner to the demands of the market sector and of users of the intellectual property systems.

Being a purely advisory body for the Director General of WIPO, the IAC's recommendations are not binding, and the IAC does not in any way replace the decision-making powers of WIPO's Member States.

Since its establishment, the IAC has held discussions on a broad range of issues, including electronic commerce, intellectual property and wealth creation, biotechnology and the impact of the global economy on the intellectual property system, as well as efforts by WIPO to promote public awareness and understanding of intellectual property and its contribution to economic and social development.

The Ad Hoc Advisory Panel on Privatization

Bearing in mind the importance of the issue of privatization in an increasing number of countries, the Director General of WIPO created a new body, the Ad Hoc Advisory Panel on Privatization, in 2000, to assist member States in determining

strong intellectual property policies and strategies for their efforts at privatization. It is a panel of nine experts representing governmental, diplomatic and academic circles.

The Panel met twice in 2000, and in particular considered how identification and appropriate valuation of intellectual property assets could be incorporated into the privatization process, especially through the provision of expert advice, training and guidelines for evaluating intellectual property assets in the privatization process.

WIPO and Public Outreach

Since 1998 WIPO has made a concerted effort to reach out not only to the intellectual property community but also to the general public, in order to demystify a hitherto specialized field for a wider public. The aim is to promote a general understanding of the role of intellectual property, and the need to foster and to protect it. WIPO has concentrated these efforts on using three types of means – information technology, more traditional information materials, and "live" activities promoting media and personal contact and inter-change.

The major tool used in information technology to reach a wider public is the Internet. Visitors to the website viewed an average of 4.5 million pages per month during 2003. The WIPO website has thousands of pages of information, including the documentation of most WIPO meetings, and many of its printed publications, were made available via the site in six languages, Arabic, Chinese, English, French, Russian and Spanish.

The more traditional printed information materials—books, pamphlets, brochures, leaflets—have increased, and new material is added, also in the form of posters and CD-ROMs. Sales of information products were enhanced by the creation of a new Visitors' Center in1998, and of an electronic bookshop in 1999.

Media activities and exhibitions on aspects of intellectual property extended public outreach. WIPO press releases, articles in the press, and media coverage on radio and television worldwide gave WIPO and its activities greater exposure amongst the public, as did exhibitions on various aspects of intellectual property (such as women inventors, inventions used in everyday life in the home, music in the digital age) held at WIPO and in some cases elsewhere.

WIPO also worked with certain member States and organizations (notably in the framework of cooperation for development) in the field of public outreach, with the object of raising awareness in the general public of the nature and importance of intellectual property.

11.8 SUMMARY

- To facilitate protection of intellectual property in several countries, the need was felt both for harmonization of IP laws internationally, and an international organization devoted to the IP issues. WIPO is the outcome of such a felt need internationally.
- WIPO is today a specialized agency of the UN in the field of intellectual Property. The membership of WIPO is open to any State member of any of the Unions under WIPO treaties, or any State member of the UN, even if it is not a member of any of the Unions, or a State member of any of the specialized agencies of the UN, or of the IAEA, or any party to the Statute of the International Court of Justice, or any State invited by the General Assembly of the WIPO to be a member.

- WIPO's mission is to promote, through international cooperation, the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind.

- WIPO presently administers 23 treaties. There is large growth of registration activity under Patent Cooperation Treaty, the Madrid Agreement and the Madrid Protocol concerning the international registration of marks, and the Hague Agreement concerning the international deposit of industrial designs.

- WIPO is increasingly involved in helping developing countries in preparing and enforcing laws, establishing sound institutions and administrative structures, and training personnel in the field of IP.

- WIPO is active in dispute resolution through WIPO Arbitration and Mediation Centre, and as an ICANN accredited agency for resolution of domain name disputes.

- WIPO launched in 1999 the WIPONET, a worldwide global intellectual property information network.

- WIPO is playing a leading role in placing intellectual property in the wider frame work of emerging issues such as traditional knowledge, folklore, biodiversity, environmental protection, human rights, digital economy, biotechnology, etc.

- WIPO has four organs: the General Assembly, the Conference, the Coordination Committee, and the International Bureau (or the WIPO Secretariat).

- The WIPO has in recent years adopted, or considered, policies that necessitate constitutional reforms.

- WIPO has sought to reach out to the wide world through the Policy Advisory Commission, the Industry Advisory Commission, the Ad hoc Advisory Panel on Privatisation, and its outreach programme to demystify intellectual property.

11.9 TERMINAL QUESTIONS

Spend 10 *min.*

1. What is the mission of the WIPO? How have WIPO activities expanded over the years? Discuss the present activities of the WIPO.
2. Why does the world need WIPO? Discuss the structure and organisation of WIPO.

11.10 ANSWERS AND HINTS

Self Assessment Questions

1. The following states can be a member of the WIPO:

   - any State which is a member of any of the Unions constituted by WIPO Treaties;
   - any State which, though not a member of any Union, is a member of the United Nations, or a member of any of the specialised agencies of the United nations, or of the International Atomic Energy Agency (IAEA);
   - any State which is a party to the Statute of the International Court of Justice;
   - any State which is invited by the General Assembly of WIPO to become a member.

2. a) F; b) T

3. - The General Assembly consists of all the States which are members of WIPO and are also members of any of the Unions.
   - The Conference consists of all the States which are members of WIPO; they may or may not be members of any of the Unions.
   - Each WIPO treaty establishes a Union. Thus a Union consists of all the States, party to a particular treaty.

Terminal Questions

1. Refer 11.3
2. Refer 11.4, 11.5

UNIT 12 WORLD INTELLECTUAL PROPERTY ORGANIZATION-II ECONOMIC DEVELOPMENT, ENFORCEMENT OF IPR AND RESOLUTION OF DISPUTES

Structure

12.1 Introduction
Objectives
12.2 Cooperation for Development
12.3 Enforcement of IPR
12.4 Resolution of Disputes
12.5 Summary
12.6 Terminal Questions
12.7 Answers and Hints

12.1 INTRODUCTION

In the previous Unit you learnt about how WIPO evolved to meet a basic need to safeguard intellectual property and encourage creative activity in diverse fields that add to generation of wealth of nations. You also learnt about the objectives of WIPO, as also its organizational and administrative structure and the significant role it has been playing as an organization of the UN. In the present Unit we will learn in some detail about the role of the WIPO in three important areas, namely,

- Cooperation for development
- Enforcement of IPR
- Resolution of disputes

Objectives

After studying this unit, you should be able to:

- understand the dimensions of the WIPO's development cooperation programs in the field of intellectual property for developing countries, countries in transition to a market economy and least developed countries (LDCs);
- explain the function of the WIPO Worldwide Academy;
- list the activities undertaken by WIPO concerning enforcement of IPR; and
- describe the role WIPO plays in the resolution of disputes concerning IP.

12.2 COOPERATION FOR DEVELOPMENT

WIPO's development cooperation aims to assist developing countries—including the least developed countries (LDCs), for which a special unit has been established in the WIPO Secretariat— and countries in transition to attain levels of socio-economic development through their intellectual property systems, which enable them to enter into effective partnership with more developed countries, and generally to take their place in the world.

The objectives of WIPO's development cooperation programs are achieved either directly, by providing legal, practical and administrative information, advice and training to governments and organizations in developing countries, or indirectly, by

facilitating their contacts with public and private bodies worldwide which can also thus assist them.

The major objectives of the development cooperation programs are to assist the said countries in:

- the establishment of intellectual property systems which are modern and function well, with regard to legislation and administration, and with personnel adequately trained and using up-to-date equipment;
- the development of human resources, especially by the WIPO Worldwide Academy;
- the adoption of timely and informed policies to meet existing and new intellectual property challenges such as the preservation, conservation and dissemination of biological diversity, the use of traditional knowledge to benefit the holders of it, the improved protection of expressions of folklore, and the implications of electronic commerce;
- the promotion of cooperation among developing countries, in particular by the use of the WIPO Global Information Network (WIPONET), in order to pool all available useful technological information resources at sub-regional and regional levels;
- the development and adjustment of information technology, in both its legal and practical aspects, to harmonize and enhance its intellectual property application worldwide;
- the creation and use of intellectual property through the setting up of innovation support structures and technology transfer.

In order to carry out activities to fulfill these aims, WIPO undertakes projects and activities tailored to the needs of particular groups of developing countries.

A single Permanent Committee on Cooperation for Development Related to Intellectual Property was established in 1999, to direct Permanent Programs in the fields of both industrial property and copyright and related rights. Its membership is open to any Member State of WIPO. The Permanent Committee is a forum for debating policy and practice in intellectual property matters of particular concern to developing countries. Its sessions have especially reviewed WIPO's newer initiatives to help developing countries to meet those challenges: the major subjects of discussion have been, among other things, the development of human resources in the context of the work of WIPO's Worldwide Academy, assistance to the Least Developed Countries (LDCs), the promotion and development of collective management of copyright and related rights (notably in connection with the development of a regional system), the promotion of innovation in all fields of intellectual property to stimulate economic growth and culture, new approaches to traditional knowledge, genetic resources and folklore, and, in support of all these and other activities, measures required to enable developing countries to benefit fully from the latest information technology. The Permanent Committee will continue to meet biennially.

Spend 3 min.

SAQ 1

In what ways does WIPO achieve the objectives of its programme of cooperation for development?

Development Cooperation Activities

WIPO's development cooperation activities in the field of intellectual property are aimed at helping developing countries in the following respects:

- training of government officials and representatives of the private sector, such as lawyers, agents and staff of collective management organizations working in the fields of copyright and related rights;
- providing legal advice and assistance in drafting new, or revising existing, intellectual property legislation;
- establishing or strengthening intellectual property offices and other related institutions;
- promoting indigenous innovative, inventive and creative activities;
- using the technological information contained in patent documents;
- establishing programs for legislators and the judiciary;
- promoting awareness of intellectual property protection in local enterprises and educational institutions.

Training

WIPO's training program consists of various regular general and specialized courses organized each year, in a number of developed and developing countries, for the collective training of government officials and others, and periodic seminars, workshops and other types of meetings at the national, sub-regional and regional levels in which government officials and other personnel from developing countries participate. In addition, government officials are attached to intellectual property offices and other institutions in developed or developing countries for practical training, and middle and senior level officials are sent on observation visits to such offices. WIPO also organizes on-the-job training in some countries by international experts. The level of training ranges from basic, introductory courses to refresher or specialization courses for officials in responsible positions in intellectual property administrations.

Training programs have been extended to other categories of beneficiaries, in addition to the government officials working in the national intellectual property administrations. These categories include private lawyers and practitioners, staff of research and development institutions, of enterprises and of collective management organizations, representatives of the judiciary, officials of enforcement agencies such as police and customs, of ministries of trade and foreign affairs and other persons dealing with questions related to intellectual property matters.

It is also desirable that the teaching of intellectual property law should be developed in a number of universities in developing countries. The International Bureau has already awarded fellowships for this purpose to university teachers from developing countries to enable such personnel to examine the course and curriculum content in order to introduce or strengthen teaching at the university level. This means a more intensive involvement in the training of trainers.

The aim of the training activities is to enable government officials and other personnel from developing countries and countries in transition to acquire knowledge and practice in the various aspects of intellectual property, so that they may effectively organize and administer the intellectual property system of their own countries. Training activities occupy a preeminent place within WIPO's development cooperation program because laws and institutions, however good they may be, are of little use without qualified staff to administer them.

Legal Advice and Assistance

In recent years, there have been many instances of a growing interest, on the part of governments of developing countries and transition countries, in making intellectual property an effective tool in the development process. The existence of intellectual property laws suited to the needs of the country concerned is a precondition of an effective intellectual property system.

For this reason, WIPO has received many requests for advice in drafting intellectual property laws where they do not exist, and in revising existing laws which are inadequate for the country's economic needs and priorities. In addition, adherence to international treaties oblige countries to adapt their legislation in order to meet the protection requirements established in those treaties.

At the request of a government, WIPO comments on draft legislation prepared by the government or prepares draft legislation with due regard to the wishes of the government and the needs of the country concerned. These wishes and needs would have been ascertained through consultations and surveys made on the spot by WIPO experts. The draft texts are then submitted to the authorities for study and comment. What follows is often an exchange of letters and visits between the authorities and WIPO experts to clarify and improve the texts.

Legal assistance is provided by the International Bureau of WIPO in two forms—the drafting of model laws and assistance in the drafting of national legislation. The International Bureau has already drawn up a number of model laws for the use of the developing countries. These texts are prepared by meetings of experts from developing countries and developed countries, working on the basis of drafts prepared by the International Bureau and, in all cases, submitted for their comments to the States and subsequently adopted by meetings of governmental experts.

In addition, WIPO has produced model laws or guides for developing countries dealing with such subjects as patents, trademarks, industrial designs and industrial property licensing, copyright and related rights, the implementation of treaties, the implementation of licensing procedures for translation and reproduction licensing under the Berne Convention, and the protection of traditional knowledge and expressions of folklore.

Institutional Assistance

A law is not an end in itself for the country concerned. It provides an important framework within which its industrial property system will function. The law must be administered and used, and for that purpose suitable administrative machinery and procedures are required.

Here again, WIPO has considerable expertise to offer to governments and institutions. WIPO experts are sent, on the request of countries, in order to give on-the-spot advice, on such matters as the establishment, streamlining and automation of procedures, preparation of organigrams, acquisition of appropriate equipment including computer hardware and software, acquisition of the required technical documentation, establishment of links with external institutions, assessment of staff requirements and training needs, utilization of office space, and the determination of suitable fee schedules. In the copyright and related rights fields, WIPO has paid special attention to the establishment and reinforcement of collective management systems, which undertake the safeguarding of the rights and interests of authors, composers and performers, and the collection and distribution of their royalties, and which also contribute to the promotion of education and culture, as well as assisting in participation in international cultural exchange.

Often, such administrative improvements and changes are planned, for implementation over a period of time, by WIPO in consultation with the authorities concerned, depending on priorities and available resources.

For an intellectual property administration system to be useful, it must serve the public. In many countries, the intellectual property system has not been used to full advantage partly because the public, including creators and business circles, are unaware of the advantages the system has to offer, and its role in the development process. WIPO therefore organizes meetings which aim at building, to start with, awareness of intellectual property by answering such basic questions as what is intellectual property, what are its constituent elements, how does intellectual property help trade, technological development and cultural development, and how to use and protect intellectual property rights at the national level?

Promotion of Indigenous Creativity, Innovation, and Inventiveness

As observed earlier, the role that the intellectual property system can play in technological, economic, and cultural development has long been recognized in developing countries. The protection afforded by intellectual property laws results in more creations, innovations and inventions, more investment and effort in research and development (R and D) in technical fields, leading to technological improvements, and thereby to improvement in the quality of industrial output, and by greater access to creations of foreign origin, in an educational and cultural climate which promotes development in general.

Without a national intellectual property system, it is difficult for a country to stimulate and protect the results of indigenous creativity and innovation. Governments can, with the help of WIPO experts, devise ways and means of encouraging local entrepreneurs and enterprises, the creation of national associations in the field, the provision of legal advice on protection procedures, financial support and incentives, public recognition of creators and inventors, the award of prizes through competitions, etc. Through mass participation in nation-wide events and competitions, and in clubs in schools, public consciousness and use of the intellectual property system is stimulated. One example is that since 1979, WIPO has established an award for inventors and innovators that is widely used by developing countries to encourage inventive activity.

Use of Patent Information

One of the activities of WIPO in assisting the development process in developing countries is directed at improving access by those countries to the technological information contained in patent documents, by the provision of the necessary patent documentation and training in methods of retrieval and dissemination.

A program, now called the WIPO Patent Information Services for Developing Countries, began in 1975. Its aim is to provide free-of-charge patent information services to institutions in developing countries under agreements concluded between the International Bureau of WIPO and contributing industrial property offices in industrialized countries.

WIPO gives assistance and advice, and is the executing agency for several UNDP projects, concerning the planning and establishment of patent information and documentation centers which serve the needs of national or regional institutions in developing countries. Such centers may be created within an existing or planned industrial property office, or within a scientific and technological information center.

Programs for Legislators and the Judiciary

WIPO cooperates in promoting the exchange of experience and other information among legislators so that they are better prepared to consider the needs, and find solutions to such needs, of their own countries, when engaged in the adaptation of their intellectual property legislations to the changing economic and technological situation, both on the domestic level and in international relations. This cooperation may take the form of national and regional seminars and study trips.

In addition, WIPO works to promote the exchange of experience and information among members of the judicial branch (judges of courts of all levels) so that they are better prepared to interpret and apply domestic laws and international treaties in the field of intellectual property law and to order measures that would prevent the continuation of infringement of intellectual property rights. Such cooperation may also take the form of national and regional seminars, simulated trials and study trips.

Promotion of Awareness in Local Enterprises and Educational Institutions

It is increasingly recognized that efficient use of the intellectual property protection system can significantly contribute to economic growth. In 2000, WIPO developed a new program of substantial new activities focusing on the needs of small- and medium-sized enterprises (SMEs) worldwide in the field of intellectual property. A new SME Division has been established in the WIPO Secretariat, with the aim of encouraging SMEs to effectively utilize the intellectual property system.

These activities recognize the important role played by such enterprises in strengthening the economic well-being of a country. Research has shown that SMEs can and should contribute considerably to employment creation and trade, which ultimately promote economic growth. It has also been shown that, given the opportunity, SMEs are innovative and competitive. However, SMEs need to be encouraged to take full advantage of the existing intellectual property protection system in order to compete more successfully in the global economy.

One of the priorities under the new program will be to raise awareness of the potential benefits for SMEs so that they will effectively use that system. The awareness-building activities will be for government institutions responsible for SMEs, other institutions supporting SMEs and, through information made available on the Internet, for SMEs themselves. These will include international, regional and national seminars organized by WIPO, distance learning courses offered by the WIPO Worldwide Academy, and joint activities in cooperation with other international or regional organizations or institutions which deal with matters concerning SMEs.

WIPO has already been active in raising awareness of the value of the intellectual property system in higher education, through cooperation activities with universities and similar institutions to include intellectual property in teaching programs. A number of cooperation agreements have been concluded with universities and regional training centers towards this aim (see under the WIPO Academy).

Spend 5 min.

SAQ 2

What role does WIPO play in the promotion of indigenous creativity, inventiveness and innovation?

The WIPO Worldwide Academy

The WIPO Worldwide Academy was established in March 1998. It is WIPO's central coordinating institution for human resources development. The overall objective of the Academy is to serve as an educational institution providing teaching, training, and

research services in intellectual property, particularly for developing countries and countries in transition. In order to meet its objectives, the Academy carries out its programs both at WIPO headquarters in Geneva, and in different parts of the world, and cooperates with several academic institutions and intellectual property offices.

Owing to the rising level of activities related to intellectual property in member countries, the demand for tailor-made programs has continued to increase steadily. In response, the Academy expanded the scope of its training programs in 2000 to include courses and seminars on the legislative, administrative and enforcement aspects of intellectual property systems.

The programs of the Academy comprise three main categories, namely, Professional Training, Policy Training, and Distance Learning.

The *Professional Training Program* offers intermediate and advanced training courses for managers and technical staff of intellectual property offices and other professional users of the system. These courses are not only for persons working in intellectual property offices, but also for those involved with research work in universities and Research and Development (R&D) institutions, as well as for those in chambers of commerce and industry.

Under the *Policy Training Progra*m, the Academy organizes sessions for decision-makers, policy advisors, development managers, diplomats and other groups, to promote policy debate and a deeper understanding of the practical implications of the intellectual property system. These sessions are also designed to provide a forum for sharing information and exchanging views on the experience of other countries in using the intellectual property system as a tool for development. In addition, special Academy sessions are organized for specific interest groups and also deal with special or topical issues, such as strengthening the teaching of intellectual property for professors and the enforcement of intellectual property rights for the judiciary.

The *Distance Learning Program* is an advance in teaching methodology, with the attendant advantages of flexibility of time and space, cost effectiveness and the capacity to reach the unreached. Distance learning courses are a complement to traditional training methods, as well as a means of increasing the range of training beneficiaries. These courses are delivered via the Internet, using a format that allows for on-line registration, student-teacher interaction, student tests, course-monitoring and evaluation systems. In addition to a “General Course on Intellectual Property”, five specialized advanced distance learning courses which focus on specific aspects of intellectual property are to be launched.

The Academy also organizes diploma programs on intellectual property law in cooperation with universities and other institutions, such as an intellectual property law program with the University of South Africa (South Africa), a Master course on intellectual property with the University of Turin (Italy) and the qualification of Master of Intellectual Property Law and Human Rights with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, University of Lund (Sweden), and the Post Graduate Diploma in Intellectual Property Rights with the Indira Gandhi National Open University (IGNOU), New Delhi, India.

12.3 ENFORCEMENT OF IPR

The repression of activities such as piracy and counterfeiting, which are factors of major economic importance, is a crucial task of WIPO. It comprises three main fields of activity.

Firstly, WIPO administers many international conventions and treaties relating to intellectual property. This aspect of WIPO's work consists basically of ensuring the proper operation of the bodies that govern these various international agreements and to obtain the accession of the largest possible number of States to them. For any repression to have proper effect it is, indeed, necessary that the most uniform legal framework possible be established, comprising high-level provisions well adapted to new circumstances and the new technological facilities available to "pirates."

A second aspect of WIPO's task is to develop new legislative provisions, both to adapt existing provisions to the new technologies and to reflect the progressively emerging consensus in favor of increasing the level of these provisions. For example, the impact of digital technology on copyright and related rights is enormous. The ability to transmit by electromagnetic waves, by cable or by satellite, musical works that are incorporated in sound or audiovisual recordings, increases the problem of unlawful reproduction and also of private copying, since works stored in digital form can be reproduced any number of times without loss of quality when compared with the original from which the copies are made.

Another basic aspect of WIPO's activities, but an essential one is the transfer of know-how required to administer the international conventions. Indeed, it is of prime importance that the provisions drawn up at the international level be applied at the national level, since promotion of creativeness first requires suitable management and the implementation of provisions adopted in favor of creators. WIPO's development cooperation activities are particularly important in this respect.

From the late 1990s until 2001, there were initially two WIPO Committees on enforcement – the Advisory Committee on Enforcement of Industrial Property Rights and the Advisory Committee on the Management and Enforcement of Copyright and Related Rights in Global Information Networks. The Advisory Committee on Enforcement of Industrial Property Rights held a meeting in October 2001, in which Member States asked the Secretariat of WIPO to initiate studies and activities to promote more effective enforcement of industrial property rights worldwide, and the identification of good practices and procedures with which to do so, while keeping the time and cost burden on administrative infrastructures to a minimum. In September 2002 it was decided that these two Committees would be merged into a single Advisory Committee on Enforcement, responsible for all intellectual property enforcement issues. Full membership is open to Member States of WIPO and/or the Paris and Berne Unions. It met for the first time in June 2003.

12.4 RESOLUTION OF DISPUTES

WIPO Arbitration and Mediation Center

In September 1993, the WIPO General Assembly unanimously approved the establishment of the WIPO Arbitration Center, now called the WIPO Arbitration and Mediation Center. The Center offers services for the resolution of intellectual property disputes between private parties through arbitration and mediation. The Center also administers special administrative procedures for the resolution of disputes arising out of the registration of Internet domain names (see section below).

The Center was created to bridge two areas which have recently undergone considerable changes in parallel to, rather than in conjunction with, each other. These areas are arbitration, or more generally, arbitration and dispute resolution, ADR, on the one hand, and intellectual property, on the other hand.

The number of institutions administering arbitration throughout the world has grown considerably, as have the numbers of arbitration proceedings initiated. At the same time, particularly in the United States of America, the types of ADR procedures

available have evolved beyond traditional arbitration and mediation to include new forms adapted from the classical model of arbitration, mini-trials, and various combinations of procedures.

The increasingly technological basis of production, the emphasis on image and marketing for the distribution of goods and services, and the proliferation and variety of media of communication have all contributed to giving unprecedented prominence to intellectual property. The increase in the number of intellectual property titles sought is mostly due to the increase in foreign-origin applications. This reflects the internationalization of markets; as enterprises seek to penetrate a wider geographical area, they seek wider protection for their intellectual property.

The increased resort to international protection of intellectual property opens new possibilities for the use of ADR. The existence of more rights raises the potential for a larger number of conflicts involving those rights. Often, however, those negotiating the licenses and other contractual arrangements pay more attention to the successful conclusion of a potential business arrangement, than to the consequences of any breakdown thereof. The developments in the area of arbitration have not necessarily found expression in contractual provisions directed at the efficient resolution of possible disputes.

In addition, the existence of a multiplicity of national and regional rights covering the same subject matter indicates the need for dispute resolution procedures which avoid recourse to different national court actions. Even if a multiplicity of separate national claims is not involved, the opposition of two foreign parties necessitates dispute-resolution procedures that avoid the court system of one of the parties.

Besides the recent evolution of intellectual property protection, many of the traditional advantages in favor of ADR apply particularly to intellectual property. The frequently multi-jurisdictional character of intellectual property disputes, and the opportunity to resolve such disputes in a single forum, have been mentioned above. Furthermore, the possibility to choose neutrals with specialized expertise is of great importance in the highly technical and scientific subject matter covered by patents, trade secrets, copyright and plant variety rights. While specialized courts exist in a number of countries, and may call on expert assistance, it may be more efficient to submit a dispute to an arbitral tribunal composed of at least one expert with specialized, relevant knowledge. In addition, the confidentiality of arbitration and other procedures offers advantages where know-how or other confidential information may be exposed in the course of a dispute.

Established in recognition of the developments described above, the WIPO Arbitration and Mediation Center offers services in relation to four dispute-settlement procedures:

Mediation: a procedure in which a neutral intermediary, the mediator, at the request of the parties to a dispute and without the power to impose a settlement, endeavors to aid the parties in reaching a mutually satisfactory settlement on the basis of their respective interests.

Arbitration: a procedure involving the submission of a dispute, pursuant to an agreement of the parties, to a mutually acceptable arbitrator or a tribunal of arbitrators, in accordance with the law and procedure adopted by the parties, resulting in a binding award.

Expedited Arbitration: an arbitration procedure where the rules limit the procedural choices of the arbitrator and the parties, in order to obtain a quicker result at a lower cost. This procedure may be practical, particularly for small-scale disputes which do not justify, in terms of personnel or financial costs, resort to court litigation or conventional arbitration.

World Intellectual Property Organization (WIPO) and World Trade Organization (WTO)

The above procedures may also be combined: parties agree to try first to resolve the dispute through mediation; if this does not produce a settlement, either party may submit the dispute to arbitration or expedited arbitration for a binding decision.

The services that WIPO provides in relation to the four procedures are essentially of two types. The first type involves making available to parties the instruments for the resolution of a dispute pursuant to one of the procedures administered by WIPO. Two such instruments are necessary—model contract clauses and submission agreements for initiating one of the four procedures, and rules for the conduct of each of these procedures, namely, the WIPO Arbitration Rules, the WIPO Expedited Arbitration Rules, the WIPO Mediation Rules, and the rules for the combined procedure.

The second type of service provided derives from these rules. The rules envisage that certain functions will be performed by the International Bureau with respect to the conduct of the dispute-settlement procedure, such as the following:

- assistance to the parties in selecting and appointing the mediator(s) or arbitrator(s), if necessary with reference to the Center's database of more than 1,000 arbitrators and mediators from more than 100 countries with experience in commercial, intellectual property and information and communications technology dispute resolution;
- guidance regarding the application of the relevant procedural rules;
- liaising between the parties and the tribunal or mediator with a view to ensuring optimal communications and procedural efficiency;
- assisting the parties in organizing any other support services that may be needed, such as translation, interpretation or secretarial services;
- fixing the fees of the arbitrators and mediators, in consultation with them and with the parties;
- administering the financial aspects of the proceedings, by obtaining a deposit from each party of the estimated costs and paying out of the deposit the fees of the arbitrators and mediators and any other support service or facilities, such as fees for interpreters, where they are required;
- when the proceedings take place at WIPO in Geneva, providing a meeting room and party retiring rooms free of charge;
- when the proceedings take place outside Geneva, assisting the parties in organizing appropriate meeting rooms and other required facilities;
- providing such other services or functions as may be required to ensure that the arbitration or mediation procedures are conducted efficiently and expeditiously.

The services described above may be used anywhere in the world. While the WIPO Rules are especially suitable in an intellectual property context, such as for a licensing dispute, they lend themselves to the resolution of all types of commercial disputes. The procedures may be applied in any legal system in the world, in any language and under any law chosen by the parties.

In addition to offering arbitration and mediation services, the WIPO Arbitration and Mediation Center organizes conferences on arbitration and mediation, as well as workshops for arbitrators and mediators.

Spend 2 min.

SAQ 3

How is mediation different from arbitration?

WIPO Internet Domain Name Dispute Resolution

As a result of their growth and of their commercial application, Internet domain names have increasingly come into conflict with trademarks and other intellectual property rights. In December 1999, the WIPO Arbitration and Mediation Center became the first provider of dispute resolution services under the Uniform Domain Name Dispute Resolution Policy (UDRP), adopted by the Internet Corporation for Assigned Names and Numbers (ICANN). On the basis of recommendations made by WIPO in the Report on the WIPO Internet Domain Name Process, the UDRP provides holders of trademark rights with an administrative mechanism for the efficient resolution of disputes arising out of the registration and use by third parties in bad faith of domain names corresponding to those trademark rights. The UDRP applies to registrations in generic top level domains (gTLDs), .com, .net and .org and the more recently introduced new gTLDs, .aero, .biz, .coop, .info, .museum, .name and .pro. Being administrative (and not arbitration), the procedure is optional for trademark owners: instead of or in addition to availing themselves of the UDRP, they may go to court. By contrast, domain name registrants must submit to the UDRP procedure, once a complaint has been filed concerning the domain name held by them; however, losing registrants may go to court.

The UDRP is limited to cases of registration and use in bad faith. For a complaint to succeed, the complainant must establish that the following three cumulative criteria are met: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the registrant of the domain name has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith. The UDRP lists several examples of such bad faith, for example, indications that the domain name has been registered for the purpose of selling it to the trademark owner or attracting visitors to the registrant's site by creating a likelihood of confusion with a third party's trademark.

Once the WIPO Center has notified the respondent of a complaint filed with the Center, the respondent has 20 days to file a response. A reasoned decision is taken two weeks later by an independent one- or three-member panel appointed by the Center. If the panel orders the transfer or cancellation of the domain name (these are the sole remedies available, for monetary damages in particular are excluded), the registrar is obliged to implement the decision, except if the losing domain name registrant files a court case against the complainant within ten days of the panel decision. The Center posts notice of the filing of a case and the full text of decisions on the Internet.

The WIPO Center has established services especially designed for the submission and conduct of UDRP cases. It has adopted Supplemental Rules regulating such aspects as the applicable fees. The Center's Website provides parties with an efficient on-line infrastructure for WIPO's domain name dispute-resolution services. It offers extensive biographical information about the neutral persons on the Center's roster of panelists, who are independent trademark and Internet specialists from a multitude of jurisdictions. In addition to source documents, a procedural flowchart and a practical guide, the Center makes available model forms for the filing as well as the defending of a case. These forms can be submitted to the Center on-line through the Center Website or as an e-mail attachment. The entire WIPO procedure is conducted and managed largely on-line, providing significant time (the average case duration is less than two months) and cost benefits to all concerned.

The simplicity of the system also extends to the schedule of fees. The costs of the procedure are normally borne in full by complainants, who pay a fixed amount that covers both the Center's services and the remuneration of the panel. Under the WIPO schedule, the actual level of the fee depends on the number of domain names

concerned and on whether the case is to be decided by a single- or three-member panel.

Registries of new gTLDs (.aero, .biz, .coop, .info, .museum, .name and .pro) have for the most part implemented, in addition to the UDRP, dispute resolution procedures specifically geared to conflicts arising during the initial registration phase. The purpose of these procedures is to provide trademark owners with additional means to ensure the protection of their rights on the introduction of these new domains. The .info Sunrise Registration Challenge Policy and the .biz

Start-Up Opposition Policy are examples of such procedures. Furthermore, registries that are restricted to certain purposes (for example, .biz for commercial purposes) provide special proceedings to resolve disputes concerning compliance with their respective registration conditions.

12.5 SUMMARY

- WIPO's development cooperation programs aims to raise the levels of socio-economic development in developing and least developed countries through their IP systems so that they can build effective partnership with developed countries.
- Towards this end WIPO offers assistance in developing legal and administrative framework and structures for IP protection, training of IP personnel, responding to emerging issues and challenges before IP, increasing their access to IP information through the WIPONET, increasing use of IT in the practice of IP activities, and creating structures to support innovation and technology transfer, giving legal advice and assistance.
- The WIPO Worldwide Academy at Geneva is devoted to human resource development in the field of IP providing teaching, training and research services.
- Repression of piracy and counterfeiting of IP is a crucial task of WIPO. It goes about this task in three ways: through administering many international conventions and treaties on IP, developing new legislative provisions; transferring the know-how to administer the international conventions. There is an Advisory Committee on Enforcement of Industrial Property Rights.
- The WIPO Arbitration and Mediation Centre offers services to resolve IP disputes between private parties. It also serves to resolve internet domain name disputes.

12.6 TERMINAL QUESTIONS *Spend* 10 *min.*

1. a) What development cooperation activities are undertaken by the WIPO? Discuss the activities under Training and Promotion of Awareness in Local Enterprises and Educational Institutions.

   b) Discuss the programmes of and facilities offered by the WIPO World Wide Academy.

2. Discuss the role and initiatives of the WIPO in enforcement of IPR and resolution of disputes.

12.7 ANSWERS AND HINTS

Self Assessment Questions

1. The WIPO achieves its objectives under the programme of cooperation for development either directly or indirectly. Directly, it provides legal, practical and administrative information, advice and training to governments and organisations in developing countries. Indirectly, it facilitates contacts with public and private bodies world wide.

2. The strict enforcement of IPRs encourages more creations, inventions and innovations besides greater investment and effort in R&D. This translates into improved technology & products as also new products and technology. This in turn leads to growth of industrial output and improvement in its quality.

   The strict enforcement of IPRs ensures greater access to foreign technology which contributes to economic growth and development in general.

   WIPO helps governments to put in place national IP systems that protect indigenous creativity and innovation and promote international exchange of IP. WIPO encourages building up of IP awareness in the public consciousness through events & competitions in schools and public. WIPO award for inventors & innovators has also enthused developing countries.

3. In mediation, a mediator at the request of the parties to the dispute, helps them arrive at a mutually acceptable settlement. The mediator has no power to impose a settlement.

   In arbitration, the parties submit the dispute to a mutually acceptable arbitrator, or a tribunal of arbitrators in pursuance of the agreement between the parties. The arbitrator or the tribunal then gives an award in accordance with the law and the procedure adopted by the parties. The arbitration award is binding on the parties.

Terminal Questions

1. a) Refer 12.2
   b) Refer 12.2

2. Refer 12.3, 12.4

UNIT 13 WORLD TRADE ORGANIZATION-I GENERAL PRINCIPLES AND AGREEMENTS

Structure

13.1 Introduction
Objectives
13.2 What is the WTO?
13.3 Trading Principles under the WTO
13.4 The WTO Agreements
13.5 Intellectual Property – The TRIPS Agreement
13.6 The Doha Agenda
13.7 Summary
13.8 Terminal Questions
13.9 Answers and Hints

13.1 INTRODUCTION

Following the end of the Second World War, a General Agreement on Tariffs and Trade (GATT) came into force in 1947 to deal with issues concerning trade and tariff at the global level. In the 1980s, as technology became the dominant engine for economic growth, the clamour of multinational corporations, which are the principal generators of technology, for an effective mechanism for world-wide protection of intellectual property, and strict enforcement of IP rights gained momentum. They had full and active support of their governments. Developed countries and international agencies projected intellectual property protection as the major factor in the growth of the world trade and made it an important item of discussion under GATT in what is known as the Uruguay Round of negotiations. The Uruguay Round began in 1986 and after intense debate spreading over eight years, concluded on April 18, 1994 with the signing of a Final Act in Marrakesh, Morocco. The World Trade Organisation (WTO) was thus born at Marrakesh. The basic purpose of the WTO is to ensure a smooth and full flow of the world trade.

The WTO is the only international Organization dealing with the global rules of trade between nations. The GATT which underwent a major revision as the result of negotiations is now the principal rule book of the WTO for trade in goods. New rules came into force for dealing with trade in services, trade related aspects of intellectual property, dispute settlement and trade policy reviews. All WTO members are subjected to periodic review of their trade policies to ensure transparency and adherence to the WTO agreement.

As of October 2004, 148 countries were members of the WTO accounting for over 97% of world trade. Decisions in WTO are made by the entire membership, typically by consensus.

Objectives

After studying this unit, you should be able to:

- explain the nature and functions of the WTO;
- describe the basic principles that underlie WTO agreements ;
- list the major multilateral and plurilateral agreements of the WTO;
- elaborate on the exceptional circumstances under which a country is permitted to act contrary to the basic principles of the WTO; and
- describe the IP related issues in the Doha Development Agenda.

13.2 WHAT IS THE WTO?

The WTO is concerned with trade between nations and strives to develop universally agreed rules of global trade. It stands for liberalization of trade, and serves as the forum where global trade agreements are negotiated and trade disputes between member nations are resolved and settled.

The WTO Agreements are legal ground rules binding member countries in the conduct of international commerce – national trade policies have to honour and remain within the limits set in these agreements. The objectives of the Agreements are two fold: to enable free flow of global trade without undesirable side effects and to allow governments to meet social and environmental objectives. For free flow of trade, obstacles have to be removed and fast: custom duties are to be lowered, quotas have to be ended, subsidies are to be withdrawn and non-tariff barriers are not to be erected. The WTO seeks to establish a transparent, rule-based system for global trade, where everyone is to abide by the agreed rules. It has an effective disputes resolution system which is meant to inspire confidence among members about a fair mechanism and neutral procedures to ensure speedy resolution of disputes.

It may be remembered how the WTO is different from its predecessor, the General Agreement on Tariffs and Trade (GATT). In the first place, as its name implied GATT was an agreement between contracting parties and not an international organisation regulating global trade in a compelling manner. Secondly, the GATT dealt with trade in goods, but the WTO agreements additionally cover trade in services, as also trade in intellectual property.

The subject matters of various agreements under the WTO include: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property.

SAQ 1

Spend 3 *min.*

Mark True (T) or False (F) against each statement:

a) Once a member-Government of WTO has made a commitment in an Agreement, it is bound to honour it. T/F

b) Going back on a commitment would invite severe retaliatory action across a broad spectrum. T/F

c) The Dispute Settlement Body has neutral procedures and inspires confidence. T/F

13.3 TRADING PRINCIPLES UNDER THE WTO

A few fundamental principles serve as the bedrock for all WTO agreements. These underlying principles are:

- Trade without discrimination
  - Most-favoured-nation (MFN) treatment
  - National treatment
- Freer trade (bringing down trade barriers)
- Predictability, through binding commitment and transparency
- Promoting fair competition
- Encouraging development and economic reform

Trade without discrimination

a) *Most favoured nation (MFN) treatment*

Despite its apparent, discriminating overtones, in the WTO parlance, the MFN means non-discrimination, where every WTO member is assured of getting the same treatment at the hands of a WTO member which it grants to any other WTO member. If a member country of WTO grants a special favour in trade to some favoured country, then all other WTO members will have to be given the same favour. Thus all countries, in the WTO system, become the most favoured nation in all other countries, making every country equal. The name, MFN, derives from the practice in earlier bilateral MFN treaties, where a country could create a club of most favoured trading partners. *Under WTO it is no more possible*. Every member is a most favoured trading partner.

The principle of MFN treatment figures prominently in the Agreements for all three main areas of trade handled by the WTO, namely,

- the General Agreement on Tariffs and Trade (GATT)
  - deals with trade in goods
- the General Agreement on Trade in Services (GATS)
  - deals with trade in services
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
  - deals with intellectual property

There could be exceptions to the MFN principle. For example, a group of countries can enter into a free trade agreement in respect of goods that are traded within the group only; a country can give special access to its markets to developing countries; a country can raise barriers against goods from special countries on consideration of unfair trade practices. But the exceptions are permitted only under strict conditions.

National Treatment

In essence it means treating foreigners and locals equally by all members of the WTO. In the context of trade, this means that all WTO members are bound to give equal treatment to imported goods and locally produced goods, foreign services and domestic services, foreign and local trademarks, copyrights, patents, designs etc. under their national laws.

The national treatment principle is emphasised in all three WIPO agreements i.e. GATT, GATS, and TRIPS, though it is handled slightly differently in each of them. A point to note is that the principle of national treatment is applicable only after a relevant item under any of the three WIPO agreements (a product, service or intellectual property) has entered the market. Its implication is that a custom duty can be levied on an item of import, even if its local counterpart attracts no tax, without violating the national treatment principle.

Free Trade

Countries are known to raise barriers to impede free flow of trade. Imposing customs duties (tariffs), selectively restricting quotas of import of various items, banning of imports altogether are some of the obvious barriers. There may be other measures which may not be so obvious but which would still have the same effect e.g. subsidies, red tape, artificially propped up exchange rates, etc. for freer trade, barriers have to be removed or lowered through negotiations. The WTO agreements encourage progressive liberalisation.

Predictability

Economic development of a country requires foreign capital, technologies and expertise. However, foreign investments are drawn if there is a promise of stability and the policy environment is predictable. Uncertainly does not exactly help confidence of foreign investors and collaborators, whether individual or institutional. The multilateral trading system under the WTO strives to create stability and predictability in the business environment through negotiations, that create binding commitments on the part of members. Examples of binding commitments are: open access to markets and ceilings on customs tariffs.

Transparency in trade rules and government policy goes a long way to inspire confidence in trading partners. The WTO has a Trade Policy Review Mechanism which keeps national trade policies under regular surveillance.

Fair competition

The WTO encourages fair competition in free trade, though the degree of freedom is circumscribed by reality. In some circumstances where trading practices of a country are proven to be unfair, as in the case of dumping and subsidies, the WTO rules permit raising of customs duty, and even other forms of protection.

The MFN and the National Treatment principles ensure, in substantial measure, that the trading environment is fair. It strongly disapproves of subsidies and dumping (exporting a product at below production cost to capture large market share). Several WTO agreements provide for conditions of fair competition to prevail e.g. in agriculture, services, intellectual property, government procurement.

Development and Reforms

Alive to the realities of the situation in developing countries, the WTO agreements provide for special assistance and trade concessions to them. Some three fourths of the members of the WTO fall under two categories: developing countries and countries in transition to market economies from the Centrally Planned Economies. They have been given additional time to comply with the requirements of the WTO agreements and join the mainstream. Developed countries have opened their markets to exports from least developed countries allowing duty free, quota free imports.

SAQ 2

Spend 4 min.

Give two instances of situations when WTO rules permit violations of its own guiding principles. Discuss.

13.4 THE WTO AGREEMENTS

The WTO is a system based on rules. Rules are actually agreements which members of the WTO have arrived after detailed negotiations. These agreements cover in the main three broad areas, namely, goods; services and intellectual property. The General Agreement on Tariffs and Trade (GATT) pertains to goods; the General Agreement on Trade in Services (GATS) pertains to services, the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) deals with intellectual property issues in world trade. All members of the WTO have to abide by these agreements.

Besides these three main agreements, there are two ‘plurilateral’ agreements, one dealing with civil aircraft and another with government procurement. These agreements have been signed by a small number of members of WTO.

The Agreements were arrived at after detailed negotiation among governments of participating countries. They lay down the principles of liberalisation, and the exceptions, as also the binding commitments of individual countries with regard to lowering of customs duties and other trade barriers, and opening their markets to services from other countries. They also set out procedures for settlement of disputes. They require governments to ensure transparency in trade policies and notify the WTO about the laws in force and measures being taken to implement the agreements. The WTO secretariat keeps a watch and submits regular reports to member countries on their respective trade policies.

In addition to the umbrella agreement establishing the WTO and the basic principles underlying the three main Agreements – the GATT, the GATS, the TRIPS – there are other agreements and annexes.

- Under GATT, the additional agreements and annexes deal with the following specific sectors or issues:
  - Agriculture
  - Textiles and clothing
  - Health regulations for farm products (Sanitary and Phytosanitary Measures Agreement – SPS)
  - Product standards (Technical Barriers to Trade Agreements – TBT)
  - Investment measures
  - Anti-dumping measures
  - Customs valuation methods
  - Pre-shipment inspection
  - Rules of origin
  - Import licensing
  - Subsidies and counter-measures
  - Safeguards

- Under GATS, there are annexes dealing with the following services:
  - Movement of natural persons
  - Air transport
  - Financial services
  - Shipping
  - Telecommunications

- The TRIPS has no additional agreements or annexes.

The agreement on SPS measures allows countries to set their own standards about farm products but they have to be based on science so that food safety regulations do not become an excuse to protect domestic producers.

Similarly the TBT Agreement tries to ensure that technical standings and regulations are not made as an excuse to create unnecessary barriers to trade. However, it is recognised that a country has the right to adopt standards to safeguard the health and life of the people, animals and plants or for the protection of environment and other interests of the consumer.

The WTO Agreement on Textile and Clothing (ATC) took over from the Multifiber Agreement since 1995. This sector will be fully integrated into GATT by January 1, 2005, when ATC will cease to exist as a separate entity. The system of quota restrictions on imports from specific countries will also come to an end by that date.

GATS deals with trade in services. The Services sector has seen the fastest growth in global economy. It accounts for 60% of global output, 30% of global employment and 20% of global trade. GATS does not question a governments right to bring in

regulation to achieve its policy objectives, or to set levels of quality, safety or price in services. It only requires them to regulate services reasonably, objectively and impartially ensuring that the regulations do not discriminate between nationals and foreigners.

The annex on movement of natural persons deals with an individual's rights to stay temporarily in a country for providing a service. Persons seeking permanent employment, residence or citizenship are not within its purview. The financial services annex does not restrict governments from taking measures to protect investors, depositors and insurance policy holders and to ensure the integrity and stability of the financial system. The annex on telecommunications requires governments to give foreign service suppliers access to the public telecommunications without discrimination. The annex on air transport services applies to repair and maintenance services of aircraft, marketing of transport services and computer reservation services.

SAQ 3

Spend 3 min.

What is the purpose of

(a) The Sanitary and Phyto-sanitary Measures Agreement?
(b) The Technical Barriers to Trade Agreement?

13.5 INTELLECTUAL PROPERTY – THE TRIPS AGREEMENT

As the economy over the years became increasingly ever more knowledge-intensive, intellectual property became more and more important in trade. Today high technology products like electronic goods, information and communication technology (ICT) products, aeronautical and aviation goods, plants and machinery, and medicines, to cite a few examples, owe their value in a large measure to the amount of invention and innovation based on research and development that has gone in to making them. The actual cost of materials and labour that makes the product is small as compared to the value of the intellectual input that has been invested to make the product a reality. This is the cost component that derives from the recognition and enforcement of intellectual property rights. Similarly, books, paintings, films, music recordings, computer software, online services etc command a price that reflects the value of creativity and information contained in them, not the cost of physical material that goes to produce them. Products are traded internationally under brand names that carry value in the market due to customers' preferences. Designs enhance value of products. Geographical indications impart great value to a host of products. The input of ideas and creativity that creates new useful product or adds value to an existing product needs to be recognised, encouraged and protected as intellectual property to ensure general economic growth and well being in a society.

If the rules for protection of intellectual property vary from country to country, it may impede the free flow of trade. Inventors and creators are not inclined to send their inventions and products in a market where IPRs are inadequate and their enforcement is weak. This distorts the free flow of trade.

The TRIPS Agreement brings the protection and enforcement of IPRs under common international rules, it lays down the minimum levels of protection of intellectual property, irrespective of its country of origin, which each country has bound itself to honour.

World Intellectual Property Organization (WIPO) and World Trade Organization (WTO)

The TRIPS Agreement recognises seven types of intellectual property:

- Copyright and related rights
- Trademarks including service marks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Undisclosed information including trade secrets

The TRIPS Agreement addresses five broad issues:

i) Basic principles of the trading system and other international intellectual property systems. There are three basic principles:

   - National treatment
   - Most-favoured nation treatment
   - IP protection should contribute to technical innovation and transfer of technology. It must benefit both the creator and the society.

ii) Adequate protection to IPRs

   The Agreement provides common ground rules to protect intellectual property.

   The following categories of intellectual property have to be registered to be able to receive protection: patents, industrial designs, integrated circuit designs, geographical indications, trademarks.

   Copyright and trade secrets are not required to be registered; they get automatic protection.

iii) Enforcement of IPRs

   Each country has to ensure that IPRs can be enforced under its domestic laws, that infringement attracts tough penalties that deter further violation, that the legal process is fair, equitable, not unnecessarily complicated or costly and does not lead to delays.

iv) Mechanism for settlement of disputes between members of the WTO

v) Special transitional arrangements

The WTO Agreements came into force on 1 January 1995. Developed countries had to bring their laws in conformity with the TRIPS within one year. Developing countries and under certain conditions, the centrally planned economies making a transition to the market economy had five years to do so. Least developed countries had 11 years, until 31 December 2006, which has now been extended to 2016 for pharmaceutical patents.

If on 1 January 1995, a developing country had no provisions for product patents, it was given 10 years to do so. But it was obliged to accept, in respect of pharmaceutical and agricultural chemical products, the filing of patent applications from 1 January 1995, though the patent did not have to be granted before the end of the 10 year transitional period. If an application for patent for such a product has been filed in a member country, exclusive marketing rights for the product had to be granted for a period of five years after obtaining marketing approval in that member or until the product patent is granted or rejected which ever period is shorter. This, however, was dependent upon the condition that for the product in question, a patent

application has been filed in another member subsequent to the entry into force of the WTO Agreement, and a patent granted by that member and the approval for marketing of that product in that member has also been obtained.

13.6 THE DOHA AGENDA

The member countries of the WTO agreed to launch new negotiations at the Fourth Ministerial Conference in Doha, Qatar, in November 2001. The issues under negotiation were concerned with the implementation of the present agreements and a few new ones. We mention in the following section some of the more relevant points for our purpose.

Implementation-related issues

By implementation is meant the problems faced by developing countries in implementing the WTO Agreements. Significant concessions were given to developing countries on several items falling under various agreements and negotiations were initiated on several others, e.g. Under GATT, in Agriculture, SPS measures, technical barriers to trade, TRIPS, and issues that cut across several agreements.

Specially with regard to the TRIPS, the Doha Declaration, after the Ministerial Conference, stresses that the TRIPS agreement is to be implemented and interpreted in a way that supports public health both in terms of access to existing medicines and creation of new medicines.

The items for new negotiations under the Doha Declaration included the following:

- Multilateral environmental agreements
  - Relationship between WTO rules on the one hand and specific trade obligations of WTO members who are party to environmental agreements.
- Observer status in the WTO to other international governmental organisations.
- Trade barriers on environmental goods and services
  - Reduction or elimination of tariff and non-tariff barriers
- Fisheries subsidies
  (Subsidiaries may harm environment by encouraging too many fishermen to chase insufficient fish).

The Doha conference was followed by the Fifth Ministerial Conference in Cancun, Mexico in September, 2003.

Though an agreement was reached, a few days before the conference on the TRIPS and public health, in several cases deadlines were missed such as‘modalities’ for market access negotiations and reform of the Dispute Settlement Understanding. There was division among members over the ‘Singapore’ issues: negotiations on investment, competition policy, transparency in government procurement, and facilitation of trade. The conference ended without consensus. The discussions are to be resumed in the future conference.

13.7 SUMMARY

- The WTO was born at Marrakesh, Morocco, replacing the erstwhile GATT at the conclusion of the Uruguay Round of intergovernmental discussions that lasted for eight years.

- The aim of the WTO is to ensure free flow of global trade without undesirable effects – through lowering of custom duties, withdrawal of subsidies and removal of non-tariff barriers.

- While GATT, before the WTO came into being, dealt with trade in goods alone, the WTO also deals with trade in services, and trade related aspects of intellectual property. The Agreements known as Rules of the WTO are: GATT (General Agreement on Tariffs and Trade) dealing with goods, the GATS (General Agreement on Trade in Services, and TRIPS Agreement.

- The guiding principles for all WTO agreements are:

  - Non-discrimination, ensured through the most favoured nation treatment and the national treatment;
  - Free trade ensured by bringing trade barriers;
  - Predictability, ensured through binding commitments and transparency;
  - Promoting fair competition; and
  - Encouraging development and economic reform.

- Besides the three main multilateral agreements, there are two plurilateral agreements which are applicable only to a small number of WTO members which have signed them. They deal with civil aircraft and government procurements.

- GATS has additional agreements and annexes dealing with several specific industry sectors or issues. GATS has several annexes dealing with various services. TRIPS has no additional agreements or annexes.

- The Sanitary and Phyto-sanitary Measures Agreement (SPS) within GATT allows countries to set their own standards for farm products based on science so that food safety does not become an excuse for protection of domestic producers. Similarly, the Technical Barriers to Trade (TBT) Agreement tries to ensure that trade barriers are not erected in the name of technical standards and regulations. The TRIPS Agreement recognised seven kinds of intellectual property: copyright and related rights; trademark including service mark; geographical indication; industrial design; patent; layout design of integrated circuits; undisclosed information including trade secrets.

- Patents, industrial designs, integrated circuit designs, geographical indications and trademarks are required to be registered to receive protection. Registration is not required for copyright and trade secrets.

- TRIPS provides common ground rules to protect IP, and enforcement of IPRs, as also a mechanism settle disputes.

- Countries may take action under special circumstances that contravene basic principles of WTO.

- Governments both give subsidies to home producers and object to subsidies that other governments give to their own industry. The WTO discipline is applicable to ‘specific subsidies’ which is available to an enterprise or an industry or to a group of them.

- The Doha Agenda was launched at the Fourth Ministerial Conference in Doha, Qatar, in November 2001. The Governments agreed to launch new negotiations and work on the implementation of the existing agreements. The entire package is referred to as the Doha Development Agenda (DDA).

13.8 TERMINAL QUESTIONS

Spend 10 *min.*

1. What is the WTO? How is it different from its predecessor GATT? Discuss the basic trading principles which are the bed-rock of all WTO agreements.

2. Which are the three main Agreements under the WTO? Which Agreement concerns the intellectual property rights? How many kinds of IP does it recognise. Which broad issues does it address?

13.9 ANSWERS AND HINTS

Self Assessment Questions

1. (a) T (b) T (c) T

2. When unfair trade practices are proven, as in a case of dumping or subsidy, the WTO rules permit anti-dumping duty in the first case and countervailing duty in the second besides other protection measures as warranted. The total custom duty in such situation may be higher than the binding commitment, and other measures may contravene the non-discrimination principle as reflected in the national treatment and most-favoured nation treatment.

3. a) To ensure that food safety regulations do not become an excuse to protect domestic producers, even while allowing countries to set their own safety standards based on science.

   b) To ensure that no barriers to flow of trade are created in the name of technical standards and regulations.

Terminal Questions

1. Refer 13.2, 13.3
2. Refer 13.5